



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

The Honorable Mike Pence
U.S. House of Representatives
1317 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Pence:

Thank you for your letter asking for my thoughts on the present-day appropriateness of the Fairness Doctrine. As you are undoubtedly aware, the Fairness Doctrine obliged broadcasters to provide an opportunity for the presentation of contrasting viewpoints on those controversial issues of public importance that they covered. *See In re Complaint of Syracuse Peace Council*, 2 FCC Rcd 5043 (1987).

In 1987, based on its 1985 Report on the Fairness Doctrine, *Inquiry into Section 73.1910 of the Commission's Rules and Regulations Concerning Alternatives to the General Fairness Doctrine Obligations of Broadcast Licensees*, 102 FCC 2d 145 (1985), and an extensive subsequent administrative record, the Commission concluded that enforcement of the Fairness Doctrine was not in the public interest and thus decided to abandon it.

Among other things, the Commission found that the doctrine "chill[ed] speech" by "provid[ing] broadcasters with a powerful incentive not to air controversial programming above [a] minimal amount" in order to avoid burdensome litigation over whether it had complied with its obligation to provide contrasting viewpoints. 2 FCC Rcd at 5049 ¶¶ 42, 43. Based on its examination of the record, the Commission concluded that the Fairness Doctrine had created "a climate of timidity and fear, which deter[red] the coverage of controversial issue programming." *Id.* at ¶ 47. Indeed, the record compiled by the Commission at the time included over 60 reported instances in which the Fairness Doctrine had inhibited broadcasters' coverage of controversial issues. *Id.* at ¶ 43.

Furthermore, the Commission determined that the doctrine "inherently provide[d] incentives that are more favorable to the expression of orthodox and well-established opinion with respect to controversial issues than to less established viewpoints." *Id.* at ¶ 45. Because broadcasters espousing provocative opinions were more likely to be subject to a Fairness Doctrine challenge, the Commission concluded that the doctrine, in operation, inhibited the goal of ensuring that the public had access to innovative and less popular viewpoints. Indeed, the Commission expressed concern that the doctrine "provide[d] a dangerous vehicle - which has been exercised in the past - for the intimidation of broadcasters who criticize government policy." *Id.* at ¶ 54. Finally, the Commission concluded that government regulation was not necessary to ensure that the public had access to a wide range of opinion on controversial issues

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of the day in light of the multiplicity of information sources available to the public, such as television stations, radio stations, daily newspapers, and cable television services. *See id.* at ¶¶ 55-56.

In reviewing the Commission's decision to abandon the Fairness Doctrine, the United States Court of Appeals for the District of Columbia Circuit determined that the Commission's findings were supported by the record, and upheld the Commission's determination that the fairness doctrine no longer served the public interest. *See Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989), *cert. denied*, 493 U.S. 1019 (1990).

In my judgment, the events of the last two decades have confirmed the wisdom of the Commission's decision to abolish the Fairness Doctrine. Discussion of controversial issues over the airwaves has flourished absent regulatory constraints, and the public now enjoys access to an ever-expanding range of views and opinions. Indeed, with the continued proliferation of additional sources of information and programming, including satellite broadcasting and the Internet, the need for the Fairness Doctrine has lessened ever further since 1987. In short, I see no compelling reason to reinstate the Fairness Doctrine in today's broadcast environment, and believe that such a step would inhibit the robust discussion of issues of public concern over the nation's airwaves.

I appreciate your interest in this important matter. Please do not hesitate to contact me if I can provide further information.

Sincerely,



Kevin J. Martin
Chairman